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10

Colborn Response to Summary Judgment Motions

(self.StevenAveryIsGuilty)

submitted 15 hours ago * by [puzzledbyital](#)

Here's the Response filed yesterday to the Motions for Summary Judgment filed by the defendants. The redactions were in the filed document. (I have a feeling there are some good things there, involving comparisons to the video of the actual testimony, that the Twins claim should be kept hidden from the public).

I haven't yet read it.

There is also an 800+ page Declaration by Colborn's attorney, with attachments, that I haven't had a chance to upload yet. It can be found at foulplay for those eager to see it now.

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They screwed up the redactions.

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During production, Chrome described MAM's intended "storyline" as something that would assist viewers to "regain faith" in Avery despite his conviction for the Halbach murder and persuade them to "question the evidence" against him. Barker Decl., Ex. 2 Manhardt #141; CAPFF #3. As part of that process, MAM's creators hoped that the audience would "feel guilty" for initially believing prosecutors' allegations against Avery. Id.; Barker Decl., Ex. 2 Manhardt #149. During production of MAM, Chrome's primary editor treated the Averys as the "underdog heroes" of the series, while law enforcement representatives were portrayed as the "overdogs." Barker Decl., Ex. 2 Manhardt #63; CAPFF #3. Chrome editors also expressed personal affection – "lots of love" – to Avery and his family. Barker Decl. Ex 2 Manhardt 86, 432, 469, 473, 549); CAPFF #3.

Bottom page 2 to top page 3:

In telling its story, MAM relies heavily on Avery and people who were friendly to him as "reliable narrators." Barker Decl., Ex. 2 Manhardt 381, 406, 483, 493, 529; CAPFF #5.

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None of the attorneys who were involved in the defense of the Avery suit appear in the episode, nor is there any independent legal commentary that might describe, for example, the legal standard that a plaintiff is required to meet in order to prevail on a claim like Avery's. Chrome's editor testified that while some documentaries use objective commentaries, MAM was "not that sort of film." CAPFF #7.

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Where convenient, Chrome's editor expressed willingness to use footage from one family gathering to represent it as another or to swap images of children regardless of their actual identities. Barker Decl., Ex. 2 (MM #328, 553-54);); CAPFF #9.

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A Chrome production email message wondered about including it but noted that some information did not fit neatly with Glynn's accusation that nothing was done with the call at the time. Barker Decl., Ex. 2 (MM ##509, 524); CAPFF#10.

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Despite these concerns, Netflix and Chrome jointly thereafter crafted a “clear” storyline that “sharpened” the impression created by stacking excerpts from other witness’ depositions in the Avery civil case. Id., Ex. 1, NFXCOL ## 227, 231, 1946, 2019; MM ##244-45, 280; CAPFF #11.

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Avery’s statements are also shown on the screen, a technique that Chrome used to highlight the “very important” things that Avery said in the series. CAPFF #13.

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Mr. Colborn responds, “No.” In the Halbach trial, Strang moves right into the next question; there is virtually no pause. Barker Decl., Ex. 3.

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Id. As noted, there was no pause and no knuckle-cracking at the time of the response to that question at the trial. Id. In their motion for summary judgment, Defendants claim that some of Chrome’s footage was “unusable” because it had a poor appearance, and that as a result, Chrome was “forced” to seek other news reporters’ footage, and that because it was necessarily co-extensive with their footage, they had to “find sections” that appeared to be similar and insert them. Id. The section that was “inserted” in place of Mr. Colborn’s original response was longer than the actual clip. Cf. id. Chrome does not explain why MAM would need to lengthen an apparent response of Mr. Colborn beyond the “No” response that he made at the Halbach trial to include dissimilar visual imagery. However, the fact that Chrome lengthened Mr. Colborn’s reaction is consistent with direction from Netflix’s production notes instructing Chrome to “hold a bit longer” on Mr. Colborn in another instance to ensure that he would look “caught in a lie,” despite acknowledging that it might require “Court footage that might not exist.” Barker Decl., Ex. 1 (NFXCOL 213, 215);CAPFF #16.

Page 20, mid page:

Immediately following that edited segment,

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The technique of creating an amalgamated statement by inserting words spoken at a different time into a statement in order to revise the portrayed statement was something that the Chrome team referenced as the “frankenbite.” Barker Decl., Ex. 2 (MM ##142,

244-45; see also 385); CAPFF #19. Netflix encouraged Chrome to use that technique to shorten trial sequences by “clip[ping] bits and pieces together.” Id., Ex. 2 (MM#1055). When asked in deposition whether viewers should be advised that segments of trial footage were “Frankenstein” versions of the testimony rather than verbatim recordings of the testimony, Chrome’s editor asserted that it was not necessary because a documentary like MAM is “not journalism.” CAPFF #19.

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CAPFF #25. In contrast, Chrome suggested to Netflix that they incorporate a shot of Mr. Colborn looking “squirmy” to include in the trailer for the series. Id., CAPFF #25.

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CAPFF #30. At the Halbach trial, the judge immediately says, “You’re excused,” to Mr. Colborn. Id. Without hesitation, Mr. Colborn stands and exits the witness stand. Id. However,

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Chrome creatives commiserated with one another that the sequences involving the verdicts were “devastating” for them. Barker Decl., Ex. 2 (MM# #271, 288, 361-62, 432); CAPFF #32.

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Page 30, under “Additional Netflix and Chrome Creative Team Communications”:

During the course of MAM’s production, Netflix’s creative team and the creative team for Chrome participated in calls that were held for the most part on a weekly basis. Barker Decl., Ex. 2 (MM #65); CAPFF #2. At these calls, Netflix provided its comments and direction for the series. Id. Netflix creators viewed numerous versions of the respective editors and had seen early “assemblies,” or what amounted to very rough drafts, of the earliest episodes. Id., Ex. 1 (NFXCOL 1906).

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CAPFF #34-- and to convey a “bad guy theme” or “villain theme” when they appeared on screen. Id., Ex. 2 (MM # #793, 817);

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CAPFF #34. This advice from Netflix was essentially singing Chrome’s song, as the saying goes, as Chrome was looking for ways to portray law enforcement representatives as “villains” in the series. Id., Ex. 2 (MM #829).

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CAPFF #36. Chrome held in high personal regard Glynn, who appears early on to interpret and explain the events as told by MAM. Barker Decl., Ex. 2 (MM #262, 429); CAPFF #37. After the release of the series, Chrome’s editor expressed giddiness at the prospect of sharing a stage

with Glynn in public comments about the series. Id. In contrast, Netflix and Chrome traded snide emails about MAM viewers giving Yelp! Reviews to the Avery prosecutors. CAPFF #37.

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CAPFF #41. Besides production notes and comments from Netflix, Chrome also received feedback through screenings with people they knew in the industry. Through these screenings, Chrome sought to ensure that audience members would have a sense of the “antagonists” and “what they were accused of doing.” CAPFF #42. The reviewers opined that the technique of using Avery as a “narrator” for his own trial was “effective.” Barker Decl., Ex. 2 (MM#525); CAPFF #42.

Page 45/46 under: “A. MAM Altered Mr. Colborn’s Prior Testimony To Make the Substance and Appearance of His Testimony Appear Less Credible”:

Defendants concede, as they must, that Plaintiff identifies numerous edits by MAM to Mr. Colborn’s direct testimony, both at the deposition taken in Avery’s civil action and at the criminal trial of the charges relating to Ms. Halbach’s murder. See, e.g., Barker Decl., Ex. 10; Demos Depo Tr., pp. 180-207.

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In general, a comparison between Mr. Colborn’s actual testimony at the Halbach trial and the MAM version reveals striking differences. At the trial, Mr. Colborn is virtually always shown looking up at the questioner and making eye contact after speaking into the microphone on the witness stand. Barker Decl., Ex. 5. In MAM, he is rarely if ever shown making eye contact. He appears to be looking down much of the time. CAPFF #73. In numerous instances, Mr. Colborn’s physical reaction does not match his reaction at trial. In a particularly egregious example, during Strang’s cross-examination of Mr. Colborn regarding the call to dispatch, Strang asks Mr. Colborn, “Were you looking at those plates when you called them in?” After Mr. Colborn’s response, “No,” Strang moves directly on to the next question; there is no pause in the testimony. Barker Decl., Ex. 3. In MAM, following Mr. Colborn’s response, there is a long pause during which, over pounding music, Strang appears to glare at Mr. Colborn after the response. Dkt #120-5 55:31- 55:54. The camera then appears to pan to Mr. Colborn, who is shown apparently shifting back in his chair and cracking his knuckles. Dkt 120-5 #55:31 – 55:54. (A side-by-side comparison of these moments in the trial as opposed to MAM is included as Barker Depo. Ex. 3.) This extended reaction, which is obviously included to make it appear that Mr. Colborn became nervous under the weight of Strang’s gaze while testifying about the call to dispatch, contradicts Defendants’ claim that they only made edits to MAM for space. It also contradicts Chrome’s assertion that they merely replaced unusable footage with better quality footage from other sources, because there was no reason for them to include in that response anything beyond the actual verbal response of “No” that 57 appeared in the actual trial, unless they were trying to make Mr. Colborn appear nervous and less credible during his testimony.

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In another example, after the conclusion of Strang’s cross-examination, Strang states, “That’s all I have.” In the Halbach trial, the judge immediately states, “You’re excused.” Mr. Colborn then arises without delay and exits the witness stand. Barker Decl., Ex. 4. In MAM, after Strang states, “That’s all I have,” the judge does not excuse Mr. Colborn. Rather, Mr. Colborn remains seated for several seconds, looking defeated, while pounding music plays. Barker Decl., Ex. 4. Not only could a jury infer from this substitution that Defendants selected the replacement clip in order to heighten the impression that Mr. Colborn was not credible; it is difficult to believe anything else.

There are numerous additional edits to Mr. Colborn's testimony that appear to change his physical reaction, including those summarized below: • Different visual into footage of testimony at Chrome Document #864, 14:57. Plaintiff testified, "That's what he told me, he never talked to her." After that statement in raw footage, Mr. Colborn continues to hold direct eye contact with the questioner. In MAM, after that statement [Episode 7], he looks down, then up, then down again (and it cuts to Steven Avery staring intently at him). Defendants substituted a different visual following this response.

- Chrome 866, at 6:03 – In audio of Ken Kratz during which he begins a question by stating "Sergeant Colborn," Mr. Colborn looks up toward the questioner when his name is mentioned. In MAM, over those words, he looks down and fiddles with his glasses instead. MAM then splices in "You were asked, as I understand as part of a civil lawsuit" – Mr. Colborn is shown in MAM ep 7 as looking down during this question. In Chrome 866, at 7:14, during the question, he makes eye contact with the questioner as the question is asked.
- A completely different "reaction shot" to Dean Strang saying "I have some questions for you" in MAM ep 7, as compared to Chrome 866 at approximately 11:15, during which Mr. Colborn looks more confident in the footage of his original reaction. 58

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- In Episode 7, at 21:59 – 22:02, Mr. Colborn's response to a spliced question that asked him whether there was "no time" that he was at the Avery property that he was not there with Lieutenant Lenk, is edited so that his "Not that I can recall" response (Chrome 867 at 29:52), and a corresponding pause that demonstrated Plaintiff's genuine attempt to recall and formulate an answer to the question, was instead replaced with a definite and quick "No sir," in an apparent attempt to buttress the impression for viewers that Plaintiff definitively was always at the property with Lt. Lenk and that Plaintiff knew that fact immediately and for certain, without having to think about it, in support of their allegation of a conspiracy involving Lt. Lenk and Mr. Colborn. Although the response "not that I can recall" is included in another responses immediately following that question positing that there was no time that Plaintiff was not there with Mr. Lenk, the omission of the "Not that I can recall" response to the prior question undermines the consistency of Plaintiff's testimony in response to these questions.
- In Episode 7 at approximately 22:21-22:27, MAM swaps out a "Yes, sir" response that shows Plaintiff looking down as he answers and during the next question posed by Mr. Strang, when in fact, Plaintiff responds to the question (whether the case was the largest investigation in which he had been involved), by briefly looking down to speak into the microphone and then immediately looking back up at Mr. Strang (Chrome 867, approximately 30:10 to 30:20).
- In Episode 7 at approximately 22:35-22:39, MAM inserts a response of "Correct" that shows Plaintiff appearing to pause and look down after responding to an altered question about his reports (and MAM omits information about the extent of his report to downplay Mr. Colborn's total contribution to the reports, as explained in Exhibit B to the Second Amended Complaint at Dkt #105 pp. 50-51], omitting and replacing two "That's correct, sir" and "Correct" responses that show Plaintiff looking down briefly to the microphone for each answer but then looking back up to the questioner each time (Chrome 867 at approximately 31:00 to 31:17). CAPFF #74, Similarly,

Page 69, under: "2) MAM Deliberately Portrays The Guilty Verdict As a Travesty of Justice."

Further, Chrome specifically included those elements of the story that were favorable to law enforcement as a storytelling device, to retell their stories later through Avery-friendly “narrators.” Barker Decl., Ex. 2 (Manhardt email message, MM#493). As Ricciardi likewise observed, Chrome’s goal was to “have viewers kicking themselves” for having believed law enforcement once again. Id., Ex. 2 Manhardt 149). MAM proves that Defendants were successful in achieving these goals in MAM.

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and appearance

Page 73/74:

Moreover, Chrome’s internal email messages demonstrate that they sought to portray the Averys as the “underdog heroes” of the series and law enforcement as the “overdogs.” Barker Decl., Ex. 2, Manhardt 63. To effect this result, they used Avery, Avery’s family members, and attorneys, and even random bar patrons, as “reliable narrators.” Barker Decl., Ex. 2 (MM #493). The message imparted by these individuals is clear: law enforcement conspired to plant evidence against Avery out of “revenge” for his prior exoneration.

Chrome deliberately looked for ways to have viewers “kicking themselves” for believing law enforcement and to “knock down” law enforcement positions. Barker Decl., Ex. 2, Manhardt 149. Even in seeking feedback from those outside their editing group, Chrome sought to ensure that viewers understood the identities of the “antagonists” and “what they were accused of 68 doing.” Further, as described above, there is no way for Chrome to contend that Mr. Colborn was not sufficiently identified as a central participant in the alleged law enforcement conspiracy, because their own juxtaposition of audio and video conveyed that message on multiple occasions throughout the series. Chrome likewise suggested that Netflix incorporate a “squirmy shot” of Mr. Colborn for the MAM trailer, showing that from the beginning, they sought to ensure that Mr. Colborn would make as poor an impression as possible with viewers. Barker Decl., Ex. 6, CHRM p. 395-397.

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